18 U.S.C.S. § 3142 (2002)

§ 3142. Release or detention of a defendant pending trial

(a) In general. Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be--

(1) Released on personal recognizance or upon execution of an unsecured appearance bond, under subsection (b) of this section;

(2) released on a condition or combination of conditions under subsection (c) of this section;

(3) temporarily detained to permit revocation of conditional release, deportation, or exclusion under subsection (d) of this section; or

(4) detained under subsection (e) of this section.

(b) Release on personal recognizance or unsecured appearance bond. The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a Federal, State, or local crime during the period of release, unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

(c) Release on conditions.

(1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person--

(A) subject to the condition that the person not commit a Federal, State, or local crime during the period of release; and

(B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person--

(i) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to

the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

(ii) maintain employment, or, if unemployed, actively seek employment;

(iii) maintain or commence an educational program;

(iv) abide by specified restrictions on personal associations, place of abode, or travel;

(v) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(vi) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;

(vii) comply with a specified curfew;

(viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(ix) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act *(21 U.S.C. 802),* without a prescription by a licensed medical practitioner;

(x) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

(xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial office may require;

(xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;

(xiii) return to custody for specified hours following release for employment, schooling, or other limited purposes; and

(xiv) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

(2) The judicial officer may not impose a financial condition that results in the pretrial detention of the person.

(3) The judicial officer may at any time amend the order to impose additional or different conditions of release.

(d) Temporary detention to permit revocation of conditional release, deportation, or exclusion. If the judicial officer determines that--

(1) such person--

(A) is, and was at the time the offense was committed, on--

(i) release pending trial for a felony under Federal, State, or local law;

(ii) release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under Federal, State, or local law; or

(iii) probation or parole for any offense under Federal, State, or local law; or

(B) is not a citizen of the United States or lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act *(8 U.S.C. 1101*(a)(20)); and

(2) the person may flee or pose a danger to any other person or the community;

such judicial officer shall order the detention of the person, for a period of not more than ten days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the Government to notify the appropriate court, probation or parole official, or State or local law enforcement official, or the appropriate official of the Immigration and Naturalization Service. If the official fails or declines to take the person into custody during that period, the person shall be treated in accordance with the other provisions of this section, notwithstanding the applicability of other provisions of law governing release pending trial or deportation or exclusion proceedings. If temporary detention is sought under paragraph (1)(B) of this subsection, the person has the burden of proving to the court such person's United States citizenship or lawful admission for permanent residence.

(e) Detention. If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other

person and the community, such judicial officer shall order the detention of the person before
trial. In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that--

(1) the person has been convicted of a Federal offense that is described in subsection (f)(1) of this section, or of a State or local offense that would have been an offense described in subsection (f)(1) of this section if a circumstance giving rise to Federal jurisdiction had existed;

(2) the offense described in paragraph (1) of this subsection was committed while the person was on release pending trial for a Federal, State, or local offense; and

(3) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described in paragraph (1) of this subsection, whichever is later.

Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act *(21 U.S.C. 801* et seq.), the Controlled Substances Import and Export Act *(21 U.S.C. 951* et seq.), the Maritime Drug Law Enforcement Act *(46 U.S.C. App. 1901* et seq.), or an offense under section 924(c), 956(a), or 2332b of title 18 of the United States Code.

(f) Detention hearing. The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set

forth in subsection (c) of this section will reasonably assure the appearance of the person as required and the safety of any other person and the community--

(1) upon motion of the attorney for the Government, in a case that involves--

(A) a crime of violence;

(B) an offense for which the maximum sentence is life imprisonment or death;

(C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act *(21 U.S.C. 801* et seq.), the Controlled Substances Import and Export Act *(21 U.S.C. 951* et seq.), or the Maritime Drug Law Enforcement Act *(46 U.S.C. App. 1901* et seq.); or

(D) any felony if the person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; or

(2) upon motion of the attorney for the Government or upon the judicial officer's own motion, in a case that involves--

(A) a serious risk that such person will flee; or

(B) a serious risk that the person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.

The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the Government, seeks a continuance. Except for good cause, a continuance on motion of the person may not exceed five days (not including any intermediate Saturday, Sunday, or legal holiday), and a continuance on motion of the attorney for the

Government may not exceed three days (not including any intermediate Saturday, Sunday, or legal holiday). During a continuance, the person shall be detained, and the judicial officer, on motion of the attorney for the Government or sua sponte, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether such person is an addict. At the hearing, the person has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The person may be detained pending completion of the hearing. The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.

(g) Factors to be considered. The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning--

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;

(2) the weight of the evidence against the person;

(3) the history and characteristics of the person, including--

(A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. In considering the conditions of release described in subsection (c)(1)(B)(xi) or (c)(1)(B)(xii) of this section, the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required.

(h) Contents of release order. In a release order issued under subsection (b) or (c) of this section, the judicial officer shall--

(1) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) advise the person of--

(A) the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

(B) the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest; and

(C) sections 1503 of this title (relating to intimidation of witnesses, jurors, and officers of the court), 1510 (relating to obstruction of criminal investigations), 1512 (tampering with a witness, victim, or an informant), and 1513 (retaliating against a witness, victim, or an informant).

(i) Contents of detention order. In a detention order issued under subsection (e) of this section, the judicial officer shall--

(1) include written findings of fact and a written statement of the reasons for the detention;

(2) direct that the person be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

(3) direct that the person be afforded reasonable opportunity for private consultation with counsel; and

(4) direct that, on order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility in which the person is confined deliver the person to a United States marshal for the purpose of an appearance in connection with a court proceeding.

The judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.

(j) Presumption of innocence. Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

M.G.L. c. 276, § 58, Paragraph 3

Chapter 276: Section 58. Release on personal recognizance or unsecured appearance bond; determination; fees; refusal; petition for review.

[A] person aforesaid charged with an offense and not released on his personal recognizance without surety by a clerk or assistant clerk of the district court, a bail commissioner or master in chancery shall forthwith be brought before the next session of the district court for a review of the order to recognize in accordance with the standards set forth in the first paragraph of this section. The court shall provide as an explicit condition of release for any person admitted to bail pursuant to this section or section fifty-seven that should said person be charged with a crime during the period of his release, his bail may be revoked in accordance with this paragraph and the court shall enter in writing on the court docket that the person was so informed and the docket shall constitute prima facie evidence that the person was so informed. If a person is on release pending the adjudication of a prior charge, and the court before which the person is charged with committing a subsequent offense after a hearing at which the person shall have the right to be represented by counsel, finds probable cause to believe that the person has committed a crime during said period of release, the court shall then determine, in the exercise of its discretion, whether the release of said person will seriously endanger any person or the community. In making said

determination, the court shall consider the gravity, nature and circumstances of the offenses charged, the person's record of convictions, if any, and whether said charges or convictions are for offenses involving the use or threat of physical force or violence against any person, whether the person is on probation, parole or other release pending completion of sentence for any conviction, whether he is on release pending sentence or appeal for any conviction, the person's mental condition, and any illegal drug distribution or present drug dependency. If the court determines that the release of said person will seriously endanger any person or the community and that the detention of the person is necessary to reasonably assure the safety of any person or the community, the court may revoke bail on the prior charge and may order said person held without bail pending the adjudication of said prior charge, for a period not to exceed sixty days. The hearing shall be held upon the person's first appearance before the court before which the person is charged with committing an offense while on release pending adjudication of a prior charge, unless that person, or the attorney for the commonwealth, seeks and the court allows, a continuance because a witness or document is not immediately available. Except for good cause, a continuance on motion of the person shall not exceed seven days and on motion of the attorney for the commonwealth may not exceed three business days. During such continuance, the person may be detained consistent with the provisions of this section. Said order shall state in writing the reasons therefor and shall be reviewed by the court upon the acquittal of the person, or the dismissal of, any of the cases involved. A person so held shall be brought to trial as soon as reasonably possible. A person aggrieved by the denial of a district court justice to admit him to bail on his personal recognizance without surety may petition the superior court for a review of the

order of the recognizance and the justice of the district court shall thereupon immediately notify such person of his right to file a petition for review in the superior court. When a petition for review is filed in the district court or with the detaining authority subsequent to petitioner's district court appearance, the clerk of the district court or the detaining authority, as the case may be, shall immediately notify by telephone, the clerk and probation officer of the district court, the district attorney for the district in which the district court is located, the prosecuting officer, the petitioner's counsel, if any, and the clerk of courts of the county to which the petition is to be transmitted. The clerk of the district court, upon the filing of a petition for review, either in the district court or with the detaining authority, shall forthwith transmit the petition for review, a copy of the complaint and of the record of the court, including the appearance of the attorney, if any is entered, and a summary of the court's reasons for denying the release of the defendant on his personal recognizance without surety to the superior court for the county in which the district court is located, if a justice thereof is then sitting, or to the superior court of the nearest county in which a justice is then sitting; the probation officer of the district court shall transmit forthwith to the probation officer of the superior court, copies of all records of the probation office of said district court pertaining to the petitioner, including the petitioner's record of prior convictions, if any, as currently verified by inquiry of the commissioner of probation. The district court or the detaining authority, as the case may be, shall cause any petitioner in its custody to be brought before the said superior court on the same day the petition shall have been filed, unless the district court or the detaining authority shall determine that such appearance and hearing on the petition cannot practically take place before the adjournment of the sitting of said superior court for that day and in

which event, the petitioner shall be caused to be brought before said court for such hearing during the morning of the next business day of the sitting of said superior court. The district court is authorized to order any officer authorized to execute criminal process to transfer the petitioner and any papers herein above described from the district court or the detaining authority to the superior court, and to coordinate the transfer of the petitioner and the papers by such officer. The petition for review shall constitute authority in the person or officer having custody of the petitioner to transport the petitioner to said superior court without the issuance of any writ or other legal process, provided, however, that any district or superior court is authorized to issue a writ of habeas corpus for the appearance forthwith of the petitioner before the superior court....

M.G.L. c. 276, § 58A

§ 58A. Pretrial Detention or Release on Condition for Certain Offenders; Hearing; Petition for Review.

(1) The commonwealth may move, based on dangerousness, for an order of pretrial detention or release on conditions for a felony offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person of another, or any other felony that by its nature involves a substantial risk that physical force against the person of another may result, including the crime of burglary and arson whether or not a person has been placed at risk thereof, or a violation of an order pursuant to section eighteen, thirty-four B or thirty-four C of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, section three, four or five of chapter two hundred and nine A, or section fifteen or twenty of chapter two hundred and nine C, or arrested

and charged with a misdemeanor or felony involving abuse as defined in section one of said chapter two hundred and nine A or while an order of protection issued under said chapter two hundred and nine A was in effect against said person, an offense for which a mandatory minimum term of three years or more is prescribed in chapter ninety-four C, arrested and charged with a violation of section thirteen B of chapter two hundred and sixty-eight or a third or subsequent conviction for a violation of section twenty-four of chapter ninety.

(2) Upon the appearance before a superior court or district court judge of an individual charged with an offense listed in subsection (1) and upon the motion of the commonwealth, the judicial officer shall hold a hearing pursuant to subsection (4) issue an order that, pending trial, the individual shall either be released on personal recognizance without surety; released on conditions of release as set forth herein; or detained under subsection (3).

If the judicial officer determines that personal recognizance will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person--

(A) subject to the condition that the person not commit a federal, state or local crime during the period of release; and

(B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community that the person--

(i) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to

assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

(ii) maintain employment, or, if unemployed, actively seek employment;

(iii) maintain or commence an educational program;

(iv) abide by specified restrictions on personal associations, place of abode or travel;

(v) avoid all contact with an alleged victim of the crime and with any potential witness or witnesses who may testify concerning the offense;

(vi) report on a regular basis to a designated law enforcement agency, pretrial service agency, or other agency;

(vii) comply with a specified curfew;

(viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(ix) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, without a prescription by a licensed medical practitioner;

(x) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency and remain in a specified institution if required for that purpose;

(xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information

regarding existing encumbrances as the judicial officer may require;

(xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;

(xiii) return to custody for specified hours following release for employment, schooling, or other limited purposes; and

(xiv) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

The judicial officer may not impose a financial condition that results in the pretrial detention of the person.

The judicial officer may at any time amend the order to impose additional or different conditions of release.

(3) If, after a hearing pursuant to the provisions of subsection (4), the district or superior court justice finds by clear and convincing evidence that no conditions of release will reasonably assure the safety of any other person or the community, said justice shall order the detention of the person prior to trial. A person detained under this subsection shall be brought to a trial as soon as reasonably possible, but in absence of good cause, the person so held shall not be detained for a period exceeding ninety days excluding any period of delay as defined in Massachusetts Rules of

Criminal Procedure Rule 36(b)(2). A justice may not impose a financial condition under this section that results in the pretrial detention of the person. Nothing in this section shall be interpreted as limiting the imposition of a financial condition upon the person to reasonably assure his appearance before the courts.

(4) When a person is held under arrest for an offense listed in subsection (1) and upon a motion by the commonwealth, the judge shall hold a hearing to determine whether conditions of release will reasonably assure the safety of any other person or the community.

The hearing shall be held immediately upon the person's first appearance before the court unless that person, or the attorney for the commonwealth, seeks a continuance. Except for good cause, a continuance on motion of the person may not exceed seven days, and a continuance on motion of the attorney for the commonwealth may not exceed three business days. During a continuance, the individual shall be detained upon a showing that there existed probable cause to arrest the person. At the hearing, such person shall have the right to be represented by counsel, and, if financially unable to retain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information. The rules concerning admissibility of evidence in criminal trials shall not apply to the presentation and consideration of information at the hearing. The facts the judge uses to support findings pursuant to subsection (3), that no conditions will reasonably assure the safety of any other person or the community, shall be supported by clear and convincing evidence. In a detention order issued pursuant to the provisions of said subsection (3) the judge shall (a) include written findings of fact and a written statement of the reasons for the detention; (b)

direct that the person be committed to custody or confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentence or being held in custody pending appeal; and (c) direct that the person be afforded reasonable opportunity for private consultation with his counsel. The person may be detained pending completion of the hearing. The hearing may be reopened before or after a determination by the justice, at any time before trial if the justice finds that information exists that was not known at the time of the hearing and that has a material bearing on the issue and whether there are conditions of release that will reasonably assure the safety of any other person and the community.

(5) In his determination as to whether there are conditions of release that will reasonably assure the safety of any other individual or the community, said justice, shall, on the basis of any information which he can reasonably obtain, take into account the nature and seriousness of the danger posed to any person or the community that would result by the person's release, the nature and circumstances of the offense charged, the potential penalty the person faces, the person's family ties, employment record and history of mental illness, his reputation, the risk that the person will obstruct or attempt to obstruct justice or threaten, injure or intimidate or attempt to threaten, injure or intimidate a prospective witness or juror, his record of convictions, if any, any illegal drug distribution or present drug dependency, whether the person is on bail pending adjudication of a prior charge, whether the acts alleged involve abuse as defined in section one of chapter two hundred and nine A, or violation of a temporary or permanent order issued pursuant to section eighteen or thirty-four B of chapter two hundred and eight, section thirty-two of chapter two hundred and nine,

sections three, four or five of chapter two hundred and nine A, or sections fifteen or twenty of chapter two hundred and nine C, whether the person has any history of orders issued against him pursuant to the aforesaid sections, whether he is on probation, parole or other release pending completion of sentence for any conviction and whether he is on release pending sentence or appeal for any conviction.

(6) Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

(7) A person aggrieved by the denial of a district court justice to admit him to bail on his personal recognizance with or without surety may petition the superior court for a review of the order of the recognizance and the justice of the district court shall thereupon immediately notify such person of his right to file a petition for review in the superior court. When a petition for review is filed in the district court or with the detaining authority subsequent to petitioner's district court appearance, the clerk of the district court or the detaining authority, as the case may be, shall immediately notify by telephone, the clerk and probation officer of the district court, the district attorney for the district in which the district court is located, the prosecuting officer, the petitioner's counsel, if any, and the clerk of courts of the county to which the petition is to be transmitted. The clerk of the district court, upon the filing of a petition for review, either in the district court or with the detaining authority, shall forthwith transmit the petition for review, a copy of the complaint and the record of the court, including the appearance of the attorney, if any is entered, and a summary of the court's reasons for denying the release of the defendant on his personal recognizance with or without surety to the superior court for the county in which the district court is located, if a justice thereof is

then sitting, or to the superior court of the nearest county in which a justice is then sitting; the probation officer of the district court shall transmit forthwith to the probation officer of the superior court, copies of all records of the probation office of said district court pertaining to the petitioner, including the petitioner's record of prior convictions, if any, as currently verified by inquiry of the commissioner of probation. The district court or the detaining authority, as the case may be, shall cause any petitioner in its custody to be brought before the said superior court within two business days of the petition having been filed. The district court is authorized to order any officer authorized to execute criminal process to transfer the petitioner and any papers herein above described from the district court or the detaining authority to the superior court, and to coordinate the transfer of the petitioner and the papers by such officer. The petition for review shall constitute authority in the person or officer having custody of the petitioner to transport the petitioner to said superior court without the issuance of any writ or other legal process; provided, however, that any district or superior court is authorized to issue a writ of habeas corpus for the appearance forthwith of the petitioner before the superior court.

The superior court shall in accordance with the standards set forth in section fifty-eight A, hear the petition for review under section fifty-eight A as speedily as practicable and in any event within five business days of the filing of the petition. The justice of the superior court hearing the review may consider the record below which the commonwealth and the person may supplement. The justice of the superior court may, after a hearing on the petition for review, order that the petitioner be released on bail on his personal recognizance without surety, or, in his discretion, to

reasonably assure the effective administration of justice, make any other order of bail or recognizance or remand the petitioner in accordance with the terms of the process by which he was ordered committed by the district court.